86TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1800

COMMUNICATIONS ACT AMENDMENTS, 1960

JUNE 13, 1960.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HARRIS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 1898]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1898) to amend the Communications Act of 1934 with respect to the procedure in obtaining a license and for rehearings under such act, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

The amendment to the text strikes all of the Senate bill and inserts in lieu thereof a substitute as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Communications Act Amendments, 1960".

SHORT-TERM GRANTS

SEC. 2. Subsection (d) of section 307 of the Communications Act of 1934 (47 U.S.C. 307) is amended by adding at the end thereof a new sentence as follows: "Consistently with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action."

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PRE-GRANT PROCEDURE

SEC. 3. (a) Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended to read as follows:

"ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES

"SEC. 309. (a) Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

"(b) Except as provided in subsection (c) of this section, no such application—

"(1) for an instrument of authorization in the case of a station in the broadcasting or common carrier services, or

"(2) for an instrument of authorization in the case of a station in any of the following categories:

"(A) fixed point-to-point microwave stations (exclusive of control and relay stations used as integral parts of mobile radio systems),

"(B) industrial radio positioning stations for which frequencies are assigned on an exclusive basis,

"(C) aeronautical en route stations,

"(D) aeronautical advisory stations,

"(E) airdrome control stations,

"(F) aeronautical fixed stations, and

"(G) such other stations or classes of stations, not in the broadcasting or common carrier services, as the Commission shall by rule prescribe.

shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof.

"(c) Subsection (b) of this section shall not apply—

"(1) to any minor amendment of an application to which such subsection is applicable, or

"(2) to any application for—

"(A) a minor change in the facilities of an authorized station,

"(B) consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control,

"(C) a license under section 319(c) or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license,

"(D) extension of time to complete construction of authorized facilities,

"(E) an authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station,

"(F) authorizations pursuant to section 325(b) where the programs to be transmitted are special events not of a continuing nature,

"(G) a special temporary authorization for nonbroadcast operation not to exceed thirty days where no application for regular operation is contemplated to be filed or pending the filing of an application for such regular operation, or

"(H) an authorization under any of the proviso clauses of section 308(a).

"(d)(1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; except that with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. The petitioner shall serve a copy of such petition on the applicant.

The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection (a). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

"(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a), it shall proceed as provided in s bsection (e).

"(e) If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

"(f) When an application subject to subsection (b) has been filed, the Commission, notwithstanding the requirements of such subsection, may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring emergency operations in the public interest and that delay in the institution of such emergency operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such emergency operations for a period not exceeding ninety days, and upon making like findings may extend such temporary authorization for one additional period not to exceed ninety days. When any such grant of a temporary authorization is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405.

"(g) The Commission is authorized to adopt reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

"(h) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 of this Act."

(b) Section 319(c) of the Communications Act of 1934 (47 U.S.C. 319(c)) is amended by striking out "and (c)" and inserting in lieu thereof "(c), (d), (e), (f), and (g)".

(c) Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended—

(1) by striking out "and party" in the first sentence and inserting in lieu thereof "any party", and

(2) by inserting after the fourth sentence a new sentence as follows: "The Commission shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appro-

priate: *Provided*, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission shall take such action within ninety days of the filing of such petition."

(d)(1) Subsections (a) and (b) of this section shall take effect ninety days after the date of the enactment of this Act.

(2) Section 309 of the Communications Act of 1934 (as amended by subsection (a) of this section) shall apply to any application to which section 308 of such Act applies (A) which is filed on or after the effective date of subsection (a) of this section, (B) which is filed before such effective date, but is substantially amended on or after such effective date, or (C) which is filed before such effective date and is not substantially amended on or after such effective date, but with respect to which the Commission by rule provides reasonable opportunity to file petitions to deny in accordance with section 309 of such Act (as amended by subsection (a) of this section).

(3) Section 309 of the Communications Act of 1934, as in effect immediately before the effective date of subsection (a) of this section, shall, on and after such effective date, apply only to applications to which section 308 of such Act apply which are filed before such effective date and not substantially amended on or after such effective date and with respect to which the Commission does not permit petitions to deny to be filed as provided in clause (C) of paragraph (2) of this subsection.

(4) The amendment made by paragraph (2) of subsection (c) of this section shall only apply to petitions for rehearing filed on or after the date of the enactment of this Act.

LOCAL NOTICE AND LOCAL HEARINGS; PAY-OFFS

SEC. 4. (a) Section 311 of the Communications Act of 1934 (47 U.S.C. 311) is amended to read as follows:

"SPECIAL REQUIREMENTS WITH RESPECT TO CERTAIN APPLICATIONS IN THE BROADCASTING SERVICE

"SEC. 311. (a) When there is filed with the Commission any application to which section 309(b)(1) applies, for an instrument of authorization for a station in the broadcasting service, the applicant—

"(1) shall give notice of such filing in the principal area which is served or is to be served by the station; and

"(2) if the application is formally designated for hearing in accordance with section 309, shall give notice of such hearing in such area at least ten days before commencement of such hearing.

The Commission shall by rule prescribe the form and content of the notices to be given in compliance with this subsection, and the manner and frequency with which such notices shall be given.

"(b) Hearings referred to in subsection (a) may be held at such places as the Commission shall determine to be appropriate, and in making such determination in any case the Commission shall consider whether the public interest, convenience, or necessity will be served by conducting the hearing at a place in, or in the vicinity of, the principal area to be served by the station involved.

"(c)(1) If there are pending before the Commission two or more applications for a permit for construction of a broadcasting station, only one of which can be granted, it shall be unlawful, without approval of the Commission, for the applicants or any of them to effectuate an agreement whereby one or more of such applicants withdraws his or their application or applications.

"(2) The request for Commission approval in any such case shall be made in writing jointly by all the parties to the agreement. Such request shall contain or be accompanied by full information with respect to the agreement, set forth in such detail, form, and manner as the Commission shall by rule require.

"(3) The Commission shall approve the agreement only if it determines that the agreement is consistent with the public interest, convenience, or necessity. If the agreement does not contemplate a merger, but contemplates the making of any direct or indirect payment to any party thereto in consideration of his withdrawal of his application, the Commission may determine the agreement to be consistent with the public interest, convenience, or necessity only if the amount or value of such payment, as determined by the Commission, is not in excess of the aggregate amount determined by the Commission to have been legitimately and prudently expended and to be expended by such applicant in connection with preparing, filing, and advocating the granting of his application.

"(4) For the purposes of this subsection an application shall be deemed to be 'pending' before the Commission from the time such application is filed with the Commission until an order of the Commission granting or denying it is no longer subject to rehearing by the Commission or to review by any court."

(b) Section 313 of such Act (47 U.S.C. 313) is amended—

(1) by inserting after the word "LAWS" in the heading of such section the following: "; REFUSAL OF LICENSES AND PERMITS IN CERTAIN CASES"; and

(2) by inserting "(a)" after "SEC. 313." and adding at the end of such section the following subsection:

"(b) The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under this section."

SUSPENSION, REVOCATION, AND CEASE AND DESIST ORDERS

SEC. 5. (a) Section 312 of the Communications Act of 1934 (47 U.S.C. 312) is amended to read as follows:

"ADMINISTRATIVE SANCTIONS

"SEC. 312. (a) The Commission may revoke any station license or construction permit—

"(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308;

"(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application;

"(3) for willful or repeated failure to operate substantially as set forth in the license;

"(4) for willful or repeated violation of, or willful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States;

"(5) for violation of or failure to observe any cease and desist order issued by the Commission under this section; or

"(6) for violation of section 1304, 1343, or 1464 of title 18 of the United States Code.

"(b) Where any person (1) has failed to operate substantially as set forth in a license, (2) has violated or failed to observe any of the provisions of this Act, or section 1304, 1343, or 1464 of title 18 of the United States Code, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States, the Commission may order such person to cease and desist from such action.

"(c) The Commission may suspend any station license for a period of not more than ten consecutive days—

"(1) for false statements made either in the application or in any statement of fact which may be required pursuant to section 308;

"(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license on an original application;

"(3) for failure to operate substantially as set forth in the license;

"(4) for violation of or failure to observe any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States;

"(5) for violation of or failure to observe any cease and desist order issued by the Commission under this section; or

"(6) for violation of section 1304, 1343, or 1464 of title 18 of the United States Code.

"(d) Before revoking a license or permit pursuant to subsection (a), issuing a cease and desist order pursuant to subsection (b), or suspending a license pursuant to subsection (c), the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or suspension or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon the licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty days after the receipt of such order, and give evidence upon the matter specified therein; except that where safety of life or property is involved, the

Commission may provide in the order for a shorter period. If after hearing, or a waiver thereof, the Commission determines that an order of revocation or suspension or a cease and desist order should issue, it shall issue such order, which shall include a statement of the findings of the Commission and the grounds and reasons therefor and specify the effective date of the order, and shall cause the same to be served on said licensee, permittee, or person.

"(e) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

"(f) The provisions of section 9(b) of the Administrative Procedure Act which apply with respect to the institution of any proceeding for the suspension or revocation of a license or permit shall apply also with respect to the institution, under this section, of any proceeding for the issuance of a cease and desist order."

(b) The first sentence of section 307(d) of the Communications Act of 1934 (47 U.S.C. 307(d)) is amended by inserting "suspended or" before "revoked".

(c) The second sentence of section 308(b) of such Act (47 U.S.C. 308(b)) is amended by inserting "suspended or" before "revoked".

(d) Section 402(b)(5) of such Act (47 U.S.C. 402(b)(5)) is amended by inserting ", suspended," after "modified".

FORFEITURE PROVISIONS RELATING TO BROADCAST LICENSEES

SEC. 6. (a) Section 503 of the Communications Act of 1934 (47 U.S.C. 503) is amended (1) by striking out the center heading and inserting in lieu thereof "Forfeitures"; (2) by inserting "(a)" after "SEC. 503."; and (3) by adding at the end thereof the following subsection:

"(b) In any case where the licensee or permittee of a broadcast station has failed to operate his station substantially as set forth in his license, or has violated or failed to observe any of the provisions of this Act or any rule or regulation of the Commission authorized by this Act or by any treaty ratified by the United States, or has violated or failed to observe any cease and desist order issued by the Commission, the Commission may order such licensee or permittee to forfeit to the United States a sum not to exceed $1,000 for each day during which the Commission finds that such violation or failure has occurred. Such forfeiture shall be in addition to any other penalty provided by this Act."

(b) Section 504(b) of such Act is amended by striking out "section 507" and inserting in lieu thereof "sections 503(b) and 507".

PROVISIONS REQUIRING ANNOUNCEMENTS AND DISCLOSURE OF CERTAIN PAYMENTS WITH RESPECT TO MATTER BROADCAST

SEC. 7. (a) Section 317 of the Communications Act of 1934 (47 U.S.C. 317) is amended to read as follows:

"ANNOUNCEMENT WITH RESPECT TO CERTAIN MATTER BROADCAST

"SEC. 317. (a)(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That 'service or other valuable consideration' shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an indentification which is reasonably related to the use of such service or property on the broadcast.

"(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

"(b) In any case where a report has been made to a radio station, as required by section 508 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

"(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

"(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

"(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section."

(b) Title V of the Communications Act of 1934 (47 U.S.C., subchapter V) is amended by adding at the end thereof the following section:

"DISCLOSURE OF CERTAIN PAYMENTS

"SEC. 508. (a) Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

"(b) Subject to subsection (d), any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

"(c) Subject to subsection (d), any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

"(d) The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317(d), an announcement is not required to be made under section 317. The inclusion in the program of the announcement required by section 317 shall constitute the disclosure required by this section.

"(e) The term 'service or other valuable consideration' as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

"(f) Any person who violates any provision of this section shall, for each such violation, be fined not more than $10,000 or imprisoned not more than one year, or both."

DECEPTIVE CONTESTS

SEC. 8. Title V of the Communications Act of 1934 (47 U.S.C., subchapter V), as amended by section 7(b) of this Act, is further amended by adding at the end thereof the following section:

"PROHIBITED PRACTICES IN CASE OF CONTESTS OF INTELLECTUAL KNOWLEDGE, INTELLECTUAL SKILL, OR CHANCE

"SEC. 509. (a) It shall be unlawful for any person, with intent to deceive the listening or viewing public—

"(1) To supply to any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill any special and secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined.

"(2) By means of persuasion, bribery, intimidation, or otherwise, to induce or cause any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill to refrain in any manner from using or displaying his knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined.

"(3) To engage in any artifice or scheme for the purpose of prearranging or predetermining in whole or in part the outcome of a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance.

"(4) To produce or participate in the production for broadcasting of, to broadcast or participate in the broadcasting of, to offer to a licensee for broadcasting, or to sponsor, any radio program, knowing or having reasonable ground for believing that, in connection with a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance constituting any part of such program, any person has done or is going to do any act or thing referred to in paragraph (1), (2), or (3) of this subsection.

"(5) To conspire with any other person or persons to do any act or thing prohibited by paragraph (1), (2), (3), or (4) of this subsection, if one or more of such persons do any act to effect the object of such conspiracy.

"(b) For the purposes of this section—

"(1) The term 'contest' means any contest broadcast by a radio station in connection with which any money or any other thing of value is offered as a prize or prizes to be paid or presented by the program sponsor or by any other person or persons, as announced in the course of the broadcast.

"(2) The term 'the listening or viewing public' means those members of the public who, with the aid of radio receiving sets, listen to or view programs broadcast by radio stations.

"(c) Whoever violates subsection (a) shall be fined not more than $10,000 or imprisoned not more than one year, or both."

The other amendment modifies the title of the bill to make it conform to the changes made by the amendment to the text.

Explanation of the Amended Bill

The committee substitute consists entirely of proposed amendments to the Communications Act of 1934.

With the exception of the "pre-grant" amendments made by section 3, the proposed amendments are for the purpose of carrying out recommendations made by the Special Subcommittee on Legislative Oversight (H. Rept. No. 1258, 86th Cong., 2d sess.) on the basis of the hearings held by it, pursuant to House Resolution 56, 86th Congress. Several of these amendments were incorporated in H.R. 11341 introduced by Representative Harris on March 23, 1960. Hearings on this bill and other bills [1] dealing with related subjects were held on April 12 and 13, 1960.

The first section of the committee substitute merely provides a "short title" for the bill. The other seven sections are explained below.

SECTION 2—SHORT-TERM GRANTS

The purpose of this section is to amend the Communications Act of 1934 to counteract the effect of a rule adopted by the FCC.

Section 307(d) of the act provides that no broadcast license shall be granted for a longer term than 3 years; and the FCC can, of course, fix a shorter period. The Commission, however, has adopted a rule that all broadcast licenses shall be granted for a term of 3 years.

Thus, it placed itself in a position where it could not, without formally changing its rule, grant a broadcast license for a term shorter than 3 years.

[1] H.R. 10241 and H.R. 10242 by Representative Bennett of Michigan, H.R. 11397 and H.R. 11398 by Representative Celler, H.R. 7017 by Representative Harris, and S. 1898.

The public interest may require the granting of shorter term licenses in order to afford the FCC a more frequent review of the licensees' performance.

This section of the committee substitute will insure that the Commission, without the necessity for conducting a rulemaking proceeding, will in the future be able to grant shorter term licenses in individual cases.

SECTION 3—PRE-GRANT PROCEDURE

This section rewrites section 309 of the Communications Act of 1934. Prior to 1952, this section of the act provided that if the Commission upon the examination of an application was able to find that the public interest, convenience, or necessity would be served thereby, it should grant such application. If, however, the Commission could not make such a finding, it was required to give notice to the applicant and afford him an opportunity for hearing.

In 1952 the Congress amended section 309 to include two new concepts. The first is contained in section 309(b) and requires the Commission, in all situations where it is unable to make the public interest findings based on an examination of the application alone, to notify the applicant and other parties in interest of the grounds and reasons why it cannot find that the public interest, convenience, or necessity will be served by granting the application prior to designating such application for hearing. Furthermore, this section requires the Commission to provide an opportunity to the applicant to reply to the objections raised in the above-described notice. This procedural step required in all instances has proved to be cumbersome, time consuming, and in many instances of no value whatsoever.

The second procedural concept added by the Communications Act Amendments, 1952 is the so-called protest procedure, contained in section 309(c). This section was amended in 1956. It provides that in any case where the Commission grants an application without a hearing any party in interest may, within 30 days after said grant without a hearing, protest the Commission's action. Moreover, it requires that this protest should be served upon the grantee and should contain such allegations of fact as will show the protestant to be a party in interest and should specify with particularity the facts relied upon by the protestant as showing that the grant was improperly made. The Commission is required to rule upon this protest within a 30-day period, making findings as to sufficiency of the protest and, where it finds that the protest is sufficient, designating the matter for hearing upon issues relating to all of the matters specified in the protest as grounds for setting aside the grant, except in cases where after oral argument the Commission finds that even if the facts were as alleged, no grounds exist for setting aside the grant is presented. The provisions of this subsection have been broadly interpreted by the courts and have proved to be a most effective device for delaying the disposition of Commission business.

The FCC, the Federal Communications Bar Association, and the American Bar Association have been seriously concerned by the procedural abuses which have arisen out of this subsection of the act. Accordingly, these organizations submitted legislative proposals de-

signed to remedy these difficulties. S. 1898 was introduced upon request of the Federal Communications Bar Association and supported by the American Bar Association. After hearings on that proposal and a proposal submitted by the FCC, the bar associations and the FCC held a series of discussions and agreed upon amendments to S. 1898. As amended and passed by the Senate, S. 1898 represented the views of both the FCC and the Federal Communications Bar Association, and the American Bar Association.

In the committee substitute section 3 relates to the subject matter of S. 1898 as it passed the Senate. Section 3 is not different in substance from the bill approved by the Senate. The provisions of section 3 have, however, been rearranged and revised in a manner which achieves greater clarity.

Section 3 of the committee substitute would delete the mandatory notice prior to designation for hearing now included in 309(b) of the act and would also substitute for the provisions of present section 309(c) a procedure which would authorize a petition to deny to be filed prior to action on the application by the Commission. This would be accomplished by requiring the Commission in substantially all broadcast and common carrier cases and certain other cases to hold applications for not less than 30 days after notice of acceptance for filing of the application by the Commission has been published. This new "pre-grant" procedure would require the Commission to consider such petitions to deny in connection with its consideration of these applications and, where upon an examination of the application and the petition to deny or any other pleadings before it, the Commission is not able to make the public interest findings required, it would designate such application for hearing. We believe that these procedural safeguards will provide an adequate opportunity for proper parties to protect their interests in an orderly and logical manner without subjecting the Commission procedures to the abuses which are inherent in the present protest procedure.

The establishment of the new "pre-grant" procedure for parties in interest is not intended to preclude any person who is interested in doing so from filing formal or informal pleadings with the Commission. Such persons, however, are not and would not be entitled to the particular procedural rights to which parties in interest would be entitled under section 309 as proposed to be amended.

Section 309(a), in the committee substitute, contains the criteria which the Commission must apply in the consideration of all applications to which section 308 of the act applies. When the Commission, upon examination of the application and such other matters as it may officially notice, finds that the public interest, convenience, and necessity will be served by the granting of such application, it shall grant such application. These criteria are presently included in section 309 of the act and are set forth in S. 1898 as passed by the Senate. The language in S. 1898 as passed by the Senate provided in subsection 309(a)(1) that "No application provided for in sections 308, 310(b), and 325(b) for an instrument of authorization for any station * * *." Since the specific references to subsections 310(b) and 325(b) present some drafting problems and since the wording of those subsections makes it clear that the procedural provisions of section 309 apply to applications filed pursuant to those sections, the specific references to

sections 310(b) and 325(b) were deleted in the revision of S. 1898 by your committee. However, this makes no substantive change.

Section 309(b), in the committee substitute, provides that no application for an instrument of authorization [1] in the case of a station in the broadcasting or common carrier services or any of several specific categories in the safety and special radio services, may be granted by the Commission earlier than 30 days following the issuance of a public notice by the Commission of its acceptance for filing of such an application or of any substantial amendment thereof. This provision is not presently included in the act. It is designed specifically to give interested parties an opportunity to learn of the application and to file a "petition to deny" as provided for by proposed subsection (d).

Subsection (c) of section 309, in the committee substitute, lists several specific exceptions to the 30-day waiting period required by subsection (b). These specific exceptions deal with situations where the matters considered are of minor concern and where the 30-day waiting period and the filing of a petition to deny would serve no useful purpose. The remedy afforded by section 405 of the Act would, however, be available in the event the Commission erred.

These specific exceptions were set forth in S. 1898 as approved by the Senate as a proviso to subsection 309(a)(1). It is the view of your committee that these exceptions to the 30-day waiting period requirement should be set out in a separate subsection and this change has been made.

Section 309(d)(1), in the committee substitute, provides that any party in interest may file with the Commission a petition to deny any application, whether as originally filed or as amended, to which subsection (b) applies. Such petition may be filed at any time prior to the day of Commission grant without a hearing. It further provides that the petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with the criteria set forth in subsection (a). It requires further that such allegations of fact, except as to matters with respect to which the Commission may take official notice, shall be supported by affidavit of a person or persons with personal knowledge thereof. In the judgment of your committee this provision is a marked improvement over the existing statutory provision contained in 309(c), which has been interpreted by the Commission to permit allegations to be made on information and belief. This practice has resulted in serious and disruptive procedural abuses. Subsection (d)(1) also provides that the applicant shall be given an opportunity to file a reply and requires that any allegations of fact or denials in such reply shall be supported by affidavits of persons with personal knowledge thereof, except with respect to those matters which the Commission may officially notice.

Subsection (d)(1) also provides that with respect to any classifications of applications the Commission may from time to time by rule specify a cutoff date, for the filing of petitions to deny, earlier than the day upon which the Commission grants the application without a hearing, but in no circumstances less than 30 days from the date upon which public notice is given that the application or any substantial

[1] This language is intended to include applications for modification of construction permits.

amendment thereof was accepted for filing. The purpose of this provision is to take care of situations where applications, because of large backlogs, may be kept on file for extended periods of time, thus affording ample opportunity for any party in interest to file a petition to deny before the application is reached for processing, and where to delay the filing of petitions to deny until the actual date of grant would result in unnecessary delay in the handling of applications. The substance of this subsection is included in S. 1898 as passed by the Senate.

Subsection (d)(2) provides that if the Commission finds after consideration of the application, the pleadings filed, or other matters which it may officially notice, that a grant of the application would be consistent with subsection (a) it shall grant the application, deny the petition, and issue a concise statement of the reasons for denying the petition which shall dispose of all substantial issues raised by the petition. This language was included to assure the petitioner that issues raised by his petition would be considered and disposed of by the Commission prior to granting the application concerned without a hearing, but at the same time to afford the Commission an opportunity to dispose of those petitions which were of no real consequence by brief orders or opinions as the circumstances may warrant without the necessity for a formal hearing. Where the Commission denies a petition to deny, the concise statement of reasons required will furnish an adequate basis for immediate judicial review or will give interested parties the opportunity to seek judicial stay of Commission action.

Subsection (d)(2) further provides that if a substantial and material question of fact is presented or if the Commission for any other reason is unable to find that a grant of the application would be consistent with subsection (a), it shall proceed as provided in subsection (e). The purpose of this language is to make it absolutely clear that the application will be designated for hearing before a grant in any case where a substantial and material question of fact is presented and not disposed of. For the purposes of sections 309 (d) and (e) a "ma erial question of fact" is a question of fact which is material to determination of the question whether the public interest, convenience, or necessity would be served by the granting of the application with respect to which such question is raised.

Subsection (e) provides that if, in case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission is for any reason unable to make the finding specified in subsection (a), it shall designate the application for hearing on the grounds and reasons then obtaining and shall notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. This section also makes provision for any party in interest who may not have been so notified by the Commission to acquire the status of a party to the proceeding by filing a petition to intervene. It further provides that any hearing so held shall be a full hearing and that the burden of proceeding with the evidence shall be upon the applicant, except with respect to any issue presented by a petition to deny or a petition to enlarge the issues. In such cases, the burden of so proceeding is to be as determined by the Commission. For the most part the substance of this subsection is presently embodied in section 309 of the

act and in S. 1898 as passed by the Senate. However, the committee has deleted the proviso in section 309(c) of the bill as passed by the Senate. Such section 309(c) is comparable to subsection (e) of the committee substitute. The proviso which was deleted reads as follows:

> *Provided*, That, if the Commission finds that by first giving the applicant and other known parties in interest notice of all objections to such application and an opportunity to reply thereto a determination of the application may be expedited, it shall forthwith give such notice and opportunity for reply before formally designating the application for hearing.

Since the Commission has ample authority to give such notice of ob-objection and opportunity to reply it did not appear necessary to include this proviso. Its deletion should not be construed as an indication on the part of the committee that such notice and opportunity for reply should not be given in all those cases where the business of the Commission would be expedited thereby. Quite to the contrary the committee expects that the Commission will use any procedural devices available to it to expedite its business.

Subsection (f) provides an opportunity for the Commission to grant special authorizations in those rare cases where to wait the 30 days specified in subsection (b) of this section would be detrimental to the public interest. Action under this subsection may be taken only when the Commission finds that there are extraordinary circumstances requiring emergency operation in the public interest and the authority granted hereunder may not exceed 90 days. However, an extension of this authority for an additional 90 days upon appropriate findings may be granted, but no further extensions thereafter may be made. It is believed that if the emergency has not subsided within the 180-day period provided in this subsection, the Commission will have had an opportunity to consider an application filed in due course and any petitions to deny filed in response thereto. This provision was included in S. 1898 as passed by the Senate.

Subsection (g) authorizes the Commission to adopt reasonable classifications of applications and amendments to carry out the purposes of the section. It is intended that under this provision of the committee substitute such classifications could be adopted by the Commission on a case by case basis or by rule. The comparable provision in the Senate passed bill authorized the Commission to adopt such classifications by rule.

Subsection (h) is essentially the same as subsection (g) in S. 1898 as passed by the Senate and subsection (d) of existing section 309 of the act.

Section 3(b) of the committee substitute merely makes editorial modifications in section 319 of the act to take account of the changes being made in section 309.

Section 3(c) of the committee substitute would amend section 405 of the Communications Act (1) by correcting an obvious typographical error in the first sentence which was inadvertently inserted by the Communications Act Amendments, 1952, (2) by adding a specific requirement that the Commission enter an order with a concise statement of the reasons for denying or granting a petition for rehearing

in whole or in part, and (3) by adding a requirement that in those cases where the petition relates to an instrument of authorization granted without a hearing, the Commission shall take action within 90 days of the filing of such petition. This provision is the same as section 3 of S. 1898 as passed by the Senate. The committee wishes to make clear that, in any situation where a petition to deny could have been filed by a party in interest prior to grant, the normal standards with respect to petitions for rehearing will apply, so that (1) no matter may be raised in a petition for rehearing which could have been raised with reasonable diligence by a petition to deny, and (2) any matter that was raised in a petition to deny and disposed of by the Commission need not be considered or discussed in detail if it is raised again.

Section 3(d)(1) of the committee substitute provides that section 3 (a) and (b) shall not take effect until 90 days after the enactment date. This is intended to give the Commission ample opportunity to establish the necessary procedures for handling petitions to deny.

Section 3(d)(2)(C) of the committee substitute provides that the Commission may by rule provide a reasonable opportunity for the filing of petitions to deny in accordance with section 309 of the act, as amended by section 3(a) of the committee substitute, after the effective date of such section 3(a), in the case of any application or class of applications which were filed prior to such effective date and not substantially amended on or after such date.

Section 3(d)(3) of the committee substitute provides that section 309 of the act, as in effect immediately before the effective date of section 3(a) of the committee substitute, shall apply only to applications which were filed before such effective date and have not substantially been amended on or after such effective date and with respect to which the Commission has not by rule provided for the filing of petitions to deny as provided in section 3(d)(2)(C).

Section 3(d)(4) of the committee substitute provides that the amendment made by section 3(c)(2) shall apply only to petitions for a rehearing filed on or after the date of the enactment of S. 1898.

SECTION 4—LOCAL HEARINGS; PAYOFFS

Local hearings

A staff study prepared for the Special Subcommittee on Legislative Oversight in the 85th Congress stressed the importance of hearings by the FCC in all cases involving television station grants and transfers.[1] In its final report, the subcommittee recommended that section 307 of the Communications Act of 1934 be amended to require a public hearing at which all interested parties shall be afforded an opportunity to be heard before the issuance of any television license.[2] This recommendation was renewed a year later, with the further stipulation that the hearing be held in the community in which the station is to be located.[3]

Section 1 of H.R. 11341 provided for mandatory local hearings. In testifying on this provision before the Subcommittee on Communica-

[1] Robert S. McMahon, "Regulation of Broadcasting—Half a Century of Government Regulation of Broadcasting and the Need for Further Legislation, a Study for the Committee on Interstate and Foreign Commerce, House of Representatives," 85th Cong., p. 165 (1958).
[2] H. Rept. No. 2711, 85th Cong., p. 12 (1959).
[3] H. Rept. No. 1258, 86th Cong., p. 39 (1960).

tions and Power, Chairman Ford stated that in many cases there are no competing applications and there is no opposition to the grant; and that the requirement of a hearing (and especially a local hearing) in every case would greatly increase the workload of the Commission. He agreed, however, that the Commission should consider community needs as to programing; that there would be situations where the Commission would find it necessary to conduct hearings; and that where such hearings are necessary it may well be that the information sought can more effectively be obtained by holding the hearing in the area to be served by the station.[1]

In the light of these considerations the committee in section 4 of the substitute, is proposing certain changes in section 311 of the act.

Section 4(a) of the committee substitute would amend section 311 so as to authorize the Commission to hold hearings at a place in, or in the vicinity of, the principal area to be served by the station involved in such hearing if the Commission determines that the public interest, convenience, or necessity would be served by conducting such local hearing.

The amendment would also require applicants for most instruments of authorization in the broadcasting service to give local notice of the filing of their applications, and, if any such application is designated for hearing, to give local notice of such hearing. Each such notice would be given in the principal area which is served or is to be served by the broadcast station with respect to which such application is filed. The Commission would prescribe by rule the form and content of such notices and the manner and frequency with which they are given.

Payoffs

In 1959 and again in 1960, the Special Subcommittee on Legislative Oversight recommended that the Communications Act of 1934 be amended to prohibit direct or indirect payoffs of competing applicants except in the proved amount of out-of-pocket expenses.[2] This recommendation was based on testimony heard by that subcommittee concerning numerous comparative TV cases before the FCC in which competing applications were withdrawn pursuant to agreement among the applicants. Frequently these agreements involve payoffs either in cash or other consideration. In one case, the promoters of a corporation which filed an application for a TV channel long after the original application for that channel was filed, were paid $200,000 over and above their expenses, to withdraw their application.[3]

The FCC has taken cognizance of this problem. On June 26, 1958, it adopted a notice of proposed rulemaking to amend the Commission's rules to provide that whenever consideration, including an agreement for consolidation of interests, is paid or promised in connection with the default, dismissal, or amendment of a broadcast application in hearing status, the applications of the parties to the agreement will be dismissed with prejudice. The FCC cited the increasing number of broadcast cases designated for comparative hearing in which com-

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[1] Hearings before Subcommittee on Communications and Power, Committee on Interstate and Foreign Commerce, House of Representatives, 86th Cong., pp. 29, 70 (1960).
[2] H. Rept. No. 2711, 85th Cong., p. 11 (1959); H. Rept. No. 1258, 86th Cong., p. 39 (1960).
[3] Testimony of Robert McMahon, hearings before Special Subcommittee on Legislative Oversight, Committee on Interstate and Foreign Commerce, House of Representatives, 85th Cong., pt. 8, pp. 2943-2947, 1971-2977 (1958).

peting applications were being amended or dismissed upon agreement calling for the payment of some consideration leaving the remaining application free for an unopposed grant. It expressed concern that such practices may tend to defeat the purpose of hearings on applications for broadcast facilities and may encourage the filing of marginal or strike applications in the hope that payment may be exacted in consideration of the amendment or dismissal of such applications. This proceeding is still pending.[1]

H.R. 11341 contained a provision prohibiting FCC approval of agreements calling for payoffs in excess of the amount expended by an applicant in connection with the prosecution of his application.

Section 4(a) of the committee substitute would amend section 311 of the act so as to make it unlawful, without approval of the Commission, in any case where two or more applications for a construction permit for a broadcasting station are pending and only one application can be granted, for the applicants to effectuate an agreement whereby one or more of such applicants withdraws his or their application or applications. The agreeing parties would be required to submit to the Commission full information with respect to the agreement which would have to be set forth in such detail, form, and manner as the Commission shall by rule require.

The Commission may approve such agreement only if it determines that it is consistent with the public interest, convenience, or necessity.

If any such agreement, other than one contemplating a bona fide merger, contemplates the making of any direct or indirect payment to any party thereto in consideration of his withdrawal of his application, the Commission may determine the agreement to be consistent with the public interest, convenience, or necessity only if the amount or value of such payment, as determined by the Commission, is not in excess of the aggregate amount determined by the Commission to have been and to be legitimately and prudently expended in connection with the prosecution of such application.

As indicated above, the provision prohibiting approval of agreements calling for payments in excess of expenditures would be inapplicable in cases of bona fide mergers and the Commission, thus, would have to determine in each instance whether a proposed merger is a bona fide merger of competing interests or whether it is merely a device to evade the prohibition applicable to non-merger agreements.

SECTION 5—SUSPENSION OF LICENSES

The principal administrative sanctions which the FCC is presently authorized to invoke against licensees who flout the law are license revocation and cease and desist orders. Revocation, of course, amounts to a death sentence for the licensee. It may also have a serious effect upon the community served by the licensee. Because of its severity, it has seldom if ever been invoked.[2]

To remedy this situation, the Attorney General and the FCC, among others, have recommended that the Commission be authorized to impose sanctions less severe than revocation, such as temporary suspension of licenses.[3]

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[1] Testimony of Hon. Frederick W. Ford, hearings before Subcommittee on Communications and Power, Committee on Interstate and Foreign Commerce, 86th Cong., p. 33 (1960).

[2] Testimony of Robert S. McMahon, hearings before Special Subcommittee on Legislative Oversight, Committee on Interstate and Foreign Commerce, 85th Cong., pt. 13, pp. 4936-4937 (1958).

[3] H. Rept. No. 1258, 86th Cong., p. 65 (1960); hearings before Subcommittee on Communications and Power, Committee on Interstate and Foreign Commerce, House of Representatives, 86th Cong., pp. 64-67 (1960).

The Special Subcommittee on Legislative Oversight recommended that the FCC be empowered to suspend licenses for brief periods [1] and H.R. 11341 contained a provision to carry out this recommendation.

Section 5(a) of the committee substitute would amend section 312 of the act to empower the Commission to suspend station licenses for a period of not more than 10 consecutive days for the same acts that station licenses could be revoked for. However, the provisions relating to revocation are different from those relating to suspension in that the latter do not require that any such act must have been done knowingly, willfully, or repeatedly.

As is now provided in section 312 in the case of issuance of an order of revocation or a cease and desist order, this amendment granting suspension power provides that before suspending a license the FCC shall serve upon the licensee, permittee, or other person involved an order to show cause why an order of suspension should not be issued. Irrespective of which of these administrative sanctions (i.e., revocation, suspension, or cease and desist order) the FCC may contemplate using when it issues the order to show cause, nothing in section 312 as so amended is intended to prevent the FCC from imposing, on the basis of the evidence adduced at the hearing, whichever sanction it deems appropriate.

SECTION 6—FORFEITURES

The inadequacies of present administrative sanctions available to the FCC have been referred to in connection with the provisions pertaining to suspension of licenses. These considerations prompted the FCC to recommend that it be given the power to impose monetary forfeitures on broadcast licensees. It expressed the view that this would provide it with an effective tool in dealing with violations in situations where revocation or suspension does not appear to be appropriate.[2]

Section 6 of the committee substitute would amend the act to authorize the Commission to impose forfeitures on licensees and permitees of broadcast stations of up to $1,000 a day for certain violations.

The amendment contains a sentence providing that forfeitures so imposed shall be in addition to any other penalty provided by the act. This is intended to mean only that the FCC will not be precluded from ordering a forfeiture merely because another type of sanction or penalty has been or may be applied to the licensee or permittee.

SECTION 7—ANNOUNCEMENTS REQUIRED BY SECTION 317; NEW DISCLOSURE REQUIREMENTS

Section 317 of the Communications Act of 1934 now reads as follows:

ANNOUNCEMENT THAT MATTER IS PAID FOR

SEC. 317. All matter broadcast by any radio station for which service, money, or any other valuable consideration is

[1] H. Rept. No. 1258, 86th Cong., p. 36 (1960).
[2] Hearings before Subcommittee on Communications and Power, Committee on Interstate and Foreign Commerce, House of Representatives, 86th Cong., pp. 65–67 (1960).

> directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.

Section 7 of the committee substitute rewrites such section 317, as explained below.

It also would add to the Act, as section 508 thereof, new "disclosure" provisions, applicable to persons other than licensees. Section 508 is also explained below.

Background

The amendment to section 317 made by section 7(a) of the committee substitute is a result of a recommendation of the Special Subcommittee on Legislative Oversight. The subcommittee, on page 39 of its interim report [1] issued February 9, 1960, recommended as follows:

> Section 317 should be amended to require announcement of payments made not only to licensees but also to any other individuals or companies for advertising "plugs" on behalf of third parties on sponsored programs. Provision should be made to prohibit payment to any person or company or the receipt by any person or company for the purpose of having included in a broadcast program any material, whether vocal or visual, without having announcement made on the program that the showing or hearing of such material has been paid for. Criminal penalties should be imposed upon any person or company who violates this section as amended.

The subcommittee's recommendation was based on evidence presented at its hearings on television quiz show programs (Nov. 4 and 5, 1959) and at its public hearings held in February, April, and May, 1960, on "payola" and related improper practices in the broadcast and phonograph record industries.

Testimony before the subcommittee showed that the owner of the Hess Bros. Department Store of Allentown, Pa., paid $10,000 in cash to get an employee of the store, on the "$64,000 Question" as a contestant (transcript, pp. 696–704, Nov. 4). The purpose of paying the $10,000 was to obtain publicity for the store.

It was further testified that numerous payments had been made to obtain mention of the store or its products on radio and television shows not sponsored by the store (transcript, pp. 741–752, Nov. 4; transcript, pp. 863–880, Nov. 5). No public announcement was made by anyone that the employee's appearance on the "$64,000 Question" was the result of a payment of money to an employee engaged in the programing of the show.

The subcommittee held 19 days of hearings on "payola" and related unfair and deceptive practices on January 27–28, February 8–10, February 15–19, March 4, April 26–29, and May 2–3 of this year. Fifty-seven witnesses were heard; they included disc jockeys and other programming personnel, network and licensee executive personnel, phonograph record manufacturers and distributors, independent data

[1] H. Rept. No. 1258, "Investigation of Regulatory Commissions and Agencies," interim report of the Committee on Interstate and Foreign Commerce, Subcommittee on Legislative Oversight, 86th Cong., 2d sess., Feb. 9, 1960.

processors, trade paper representatives, songwriters and publishers, and members of the subcommittee staff.

Testimony appears to indicate that the selection of much of the music heard on the air may have been influenced by payments of money, gifts, etc., to programming personnel. In some instances, these payments were rationalized as licensing fees and consultation fees.

Another situation explored in some detail by the subcommittee was that of an arrangement between an airline and a television producing company (tr. 1945–1955, 2002–2004, May 2, and 2075–2087, 2122–2131, May 3, passim). The airline agreed to pay periodically to a producing company amounts aggregating some $7,000 over the contract term. In return, the airline was given a credit at the end of the television program to the effect that "travel for the show [was] arranged through the _____ Airlines."

The president of the network over whose facilities the program was broadcast testified on May 5 that the airline contract had the approval of the network.

The foregoing illustrations explain why the committee believes it necessary that section 317 be clarified and expanded. The section as it has existed since the Federal Radio Act appears to go only to payments to licensees as such. The fact that licensees now delegate much of their actual programming responsibilities to others makes it imperative that the coverage of section 317 be extended in some appropriate manner to those in fact responsible for the selection and inclusion of broadcast matter.

As a result of these disclosures the Federal Communications Commission on March 16, 1960, issued a Public Notice entitled "Sponsorship Identification of Broadcast Material." [1]

In this Public Notice the Commission interpreted the provisions of section 317 as requiring an announcement in situations involving gifts to licensees of matter to be exposed in the course of broadcasts by such licensees. Such interpretation of the provisions of section 317 would require, for example, an announcement of the fact that a phonograph record played by a radio station was given to such station by the XYZ company.

The radio and television industry strongly opposed this interpretation of section 317, a provision which, in its original form, had been enacted in 1927 and which up to this point had never been so interpreted by the Commission.

The amendment to section 317 and the accompanying disclosure provisions are aimed at (1) preventing recurrences of the extreme types of "payola" situations uncovered by the Special Subcommittee on Legislative Oversight, and (2) avoiding some of the hardships which have resulted from the Commission's interpretation of the present language of section 317 as set forth in the Commission's Public Notice of March 16, 1960.[1]

Indirect benefits which may accrue to station licensees and their employees or other persons concerned with the selection of programs or program matter for broadcasting by reason of ownership of stock or other interests in companies engaged in the preparation or production of programs or program matter are not covered by section 317, as it is being amended, or by the proposed disclosure provisions. Dis-

[1] See app. C.

closure of such benefits may be required by the Commission under its general rulemaking powers.[1]

Proposed section 317(a)(1)

Section 317(a)(1), as it appears in section 7(a) of the committee substitute, is, except for the proviso, substantially identical with section 317 as presently in effect.

The proviso reads as follows:

> *Provided,* That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

In other words, the proviso would establish a general rule that an announcement shall not be required under section 317 with respect to any service or property furnished "without charge or at a nominal charge" to a broadcast licensee for use on or in connection with a broadcast, but this is subject to the exception that an announcement will be required if the service or property is furnished "in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name *beyond an identification which is reasonably related to the use of such service or property on the broadcast*". [Emphasis supplied.]

The effect of the proviso would be to exempt from the announcement requirement some of the situations, involving the furnishing of services or property to licensees without charge or at a nominal charge for use on or in connection with broadcasts, in the case of which the interpretation placed on section 317 of present law by the Commission in its Public Notice of March 16, 1960,[2] would require such an announcement.

The intended effect of this proviso is illustrated in the examples which follow:

A. Free records[3]

1. A record distributor furnishes copies of records to a broadcast station or a disc jockey for broadcast purposes. No announcement is required unless the supplier furnished more copies of a particular recording than are needed for broadcast purposes. Thus, should the record supplier furnish 50 or 100 copies of the same release, with an agreement by the station, express or implied, that the record will be used on a broadcast, an announcement would be required because consideration beyond the matter used on the broadcast was received.

2. An announcement would be required for the same reason if the payment to the station or disc jockey were in the form of cash or other property, including stock.

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[1] See Report to the President by the Attorney General on Deceptive Practices in Broadcasting Media, Dec. 30, 1959, p. 47.

[2] See app. C.

[3] In view of the attention which has been given to the problem of free records, they are treated herein as a special category. It should be noted, however, that the same principles apply to records as to other property or services furnished for use on or in connection with a broadcast.

3. Several distributors supply a new station, or a station which has changed its program format (e.g., from "rock and roll" to "popular" music), with a substantial number of different releases.[1] No announcement is required under section 317 where the records are furnished for broadcast purposes only; nor should the public interest require an announcement in these circumstances. The station would have received the same material over a period of time had it previously been on the air or followed this program format.

4. Records are furnished to a station or disc jockey in consideration for the special plugging of the record supplier or performing talent beyond an identification reasonably related to the use of the record on the program. If the disc jockey were to state: "This is my favorite new record, and sure to become a hit; so don't overlook it," and it is understood that some such statement will be made in return for the record and this is not the type of statement which would have been made absent such an understanding, and the supplying of the record free of charge, an announcement would be required since it does not appear that in those circumstances the identification is reasonably related to the use of the record on that program. On the other hand, if a disc jockey, in playing a record, states: "Listen to this latest release of performer 'X,' a new singing sensation," and such matter is customarily interpolated in the disc jockey's program format and would be included whether or not the particular record had been purchased by the station or furnished to it free of charge, it would appear that the identification by the disc jockey is reasonably related to the use of the record on that particular program and there would be no announcement required.

B. Where payment in any form other than the matter used on or in connection with the broadcast is made to the station or to anyone engaged in the selection of program matter

5. A department store owner pays an employee of a producer to cause to be mentioned on a program the name of the department store. An announcement is required.

6. An airline pays a station to insert in a program a mention of the airline. An announcement is required.

7. A perfume manufacturer gives five dozen bottles to the producer of a giveaway show, some of which are to be identified and awarded to winners on the show, the remainder to be retained by the producer. An announcement is required since those bottles of perfume retained by the producer constitute payment for the identification.

8. An automobile dealer furnishes a station with a new car, not for broadcast use, in return for broadcast mentions. An announcement is required; the car constituting payment for the mentions.

9. A Cadillac is given to an announcer for his own use in return for a mention on the air of a product of the donor. An announcement is required since there has been a payment for a broadcast mention.

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[1] A question has been raised with respect to a situation where a distributor furnishes to a station free of charge an entire music library with the understanding, express or implied, that only its records would be played on the station. To the extent that such an arrangement may run afoul of the antitrust laws or may constitute an abdication by the station of its licensee responsibility, an announcement under sec. 317 would not cure it.

C. Where service or property is furnished free for use on or in connection with a program, but where there is neither payment in consideration for broadcast exposure of the service or property, nor an agreement for identification of such service or property beyond its mere use on the program [1]

10. Free books or theater tickets are furnished to a book or dramatic critic of a station. The books or plays are reviewed on the air. No announcement is required. On the other hand, if 40 tickets are given to the station with the understanding, express or implied, that the play would be reviewed on the air, an announcement would be required because there has been a payment beyond the furnishing of a property or service for use on or in connection with a broadcast.

11. News releases are furnished to a station by Government, business, labor and civic organizations, and private persons, with respect to their activities, and editorial comment therefrom is used on a program. No announcement is required.

12. A Government department furnishes air transportation to radio newscasters so they may accompany a foreign dignitary on his travels throughout the country. No announcement is required.

13. A municipality provides street signs and disposal containers for use as props on a program. No announcement is required.

14. A hotel permits a program to originate on its premises. No announcement is required. If, however, in return for the use of the premises, the producer agrees to mention the hotel in a manner not reasonably related to the use made of the hotel on that particular program, an announcement would be required.

15. A refrigerator is furnished for use as part of the backdrop in a kitchen scene of a dramatic show. No announcement is required.

16. A Coca-Cola distributor furnishes a Coca-Cola dispenser for use as a prop in a drugstore scene. No announcement is required.

17. An automobile manufacturer furnishes his identifiable current model car for use in a mystery program, and it is used by a detective to chase a villain. No announcement is required. If it is understood, however, that the producer may keep the car for his personal use, an announcement would be required. Similarly, an announcement would be required if the car is loaned in exchange for a mention on the program beyond that reasonably related to its use, such as the villain saying: "If you hadn't had that speedy Chrysler, you never would have caught me."

18. A private zoo furnishes animals for use on a children's program. No announcement is required.

19. A university makes one of its professors available to give lectures in an educational program series. No announcement is required.

20. A well-known performer appears as a guest artist on a program at union scale because the performer likes the show, although the performer normally commands a much higher fee. No announcement is required.

21. An athletic event promoter permits broadcast coverage of the event. No announcement is required in absence of other payment by the promoter or agreement to identify in a manner not reasonably related to the broadcast of the event.

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[1] In each of the examples listed under this heading, an announcement would appear to be required under the Commission's Mar. 16, 1960, Public Notice.

D. Where service or property is furnished free for use on or in connection with a program, with the agreement, express or implied, that there will be an identification beyond mere use of the service or property on the program [1]

22. A refrigerator is furnished by X with the understanding that it will be used in a kitchen scene on a dramatic show and that the brand name will be mentioned. During the course of the program the actress says: "Donald, go get the meat from my new X refrigerator." An announcement is required because the identification by brand name is not reasonably related to the particular use of such refrigerator in this dramatic program.

23. (*a*) A refrigerator is furnished by X for use as a prize on a giveaway show, with the understanding that a brand identification will be made at the time of the award. In the presentation, the master of ceremonies briefly mentions the brand name of the refrigerator, its cubic content, and such other features as serve to indicate the magnitude of the prize. No announcement is required because such identification is reasonably related to the use of the refrigerator on a giveaway show in which the costly or special nature of the prizes is an important feature of this type of program.

(*b*) In addition to the identification given in (*a*) above, the master of ceremonies says: "All you ladies sitting there at home should have one of these refrigerators in your kitchen," or "Ladies, you ought to go out and get one of these refrigerators." An announcement is required because each of these statements is a sales "pitch" not reasonably related to the giving away of the refrigerator on this type of program.

The significance of the distinction between the identification in (*a*) and that in (*b*) is, that in (*a*) it is no more than the natural identification which a broadcaster would give to a refrigerator as a prize if he had purchased the refrigerator himself and had no understanding whatever with the manufacturer as to any identification. That is to say, in situation (*a*), had the broadcaster purchased the refrigerator he would have felt it necessary, in view of the nature of the show, adequately to describe the magnitude of the prize which was being given to the winner. On the other hand, the broadcaster would not, where he had purchased the refrigerator, have made the type of identification in situation (*b*), thus providing a free sales "pitch" for the manufacturer.

24. (*a*) An airplane manufacturer furnishes free transportation to a cast on its new jet model to a remote site, and the arrival of the cast at the site is shown as part of the program. The name of the manufacturer is identifiable on the fuselage of the plane in the shots taken. No announcement is required because in this instance such identification is reasonably related to the use of the service on the program.

(*b*) Same situation as in (*a*), except that after the cameraman has made the foregoing shots he takes an extra closeup of the identification insignia. An announcement is required because the closeup is not reasonably related to the use of the service on the program.

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[1] Of course, in all these cases, if there is payment to the station or production personnel in consideration for the exposure, an announcement is required.

25. (*a*) A station produces a public service documentary showing development of irrigation projects. Brand X tractors are furnished for use on the program. The tractors are shown in a manner not resulting in identification of the brand of tractors except as may be recognized from the shape or appearance of the tractors. No announcement is required since the identification is reasonably related to the use of the tractors on the program.

(*b*) Same situation as in (*a*), except that the brand name of the tractor is visible as it appears normally on the tractor. No announcement is required for the same reason.

(*c*) Same situation as in (*b*), except that a closeup showing the brand name in a manner not required in the nature of the program is included in the program, or an actor states: "This is the best tractor on the market." An announcement is required as this identification is beyond that which is reasonably related to the use of the tractor on the program.

26. (*a*) A bus company prepares a scenic travel film which it furnishes free to broadcast stations. No mention is made in the film of the company or its buses. No announcement is required because there is no payment other than the matter furnished for broadcast and there is no mention of the bus company.

(*b*) Same situation as in (*a*), except that a bus, clearly identifiable as that of the bus company which supplied the film, is shown fleetingly in highway views in a manner reasonably related to that travel program. No announcement is required.

(*c*) Same situation as in (*a*), except that the bus, clearly identifiable as that of the bus company which supplied the film, is shown to an extent disproportionate to the subject matter of the film. An announcement is required, because in this case by the use of the film the broadcaster has impliedly agreed to broadcast an identification beyond that reasonably related to the subject matter of the film.

27. (*a*) A manufacturer furnishes a grand piano for use on a concert program. The manufacturer insists that enlarged insignia of its brand name be affixed over normal insignia on the piano. An announcement is required if an enlarged brand name is shown.

(*b*) Conversely, if the piano furnished has normal insignia and during the course of the televised concert the broadcast includes occasional closeups of the pianist's hands, no announcement is required even though all or part of the insignia appears in these closeups. Here the identification of the brand name is reasonably related to the use of the piano by the pianist on the program. However, if undue attention is given the insignia rather than the pianist's hands, an announcement would be required.

Proposed section 317(a)(2)

This subsection makes it clear that the instant legislation is not intended to change the Commission's present requirement that an announcement be made in the case of any political program or any program involving the discussion of any controversial issue even where the program matter is furnished without charge or at a nominal charge as an inducement to the broadcast of the program. Thus, an announcement in these circumstances may be required even though, in fact, the matter broadcast is not "paid" matter. However, the Commission in 1944, with the concurrence of the broadcast industry, pro-

mulgated a rule to this effect. The broadcast industry at no time has raised objection to the announcement requirement in these situations. In order to provide specific statutory authority for the requirement of an announcement here, the substance of the Commission rule has been included as subsection (a)(2) of the amended section 317.

Proposed section 317 (b), (c), (d), and (e)

Subsection (b) places on licensees a new duty to make announcements regarding paid-for matter. As has been stated, this bill proposes to add a new section 508 to the act, pursuant to which information will be transmitted to licensees with respect to payments, made to persons other than licensees, for the broadcast of matter over the stations of such licensees. Subsection (b) requires that when information of this kind is reported to a licensee it shall be the duty of the licensee to make an appropriate announcement.

As a further means of insuring that licensees will be in a position to make the announcement referred to in subsection (b), subsection (c) provides that every broadcast licensee shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals, information to enable such licensee to make the announcements required by section 317.

Subsection (d) is a new provision authorizing the Commission to waive the requirement of an announcement under section 317 in any case or class of cases if it determines that this would be consistent with the public interest, convenience, and necessity.

Subsection (e) authorizes the Commission to prescribe rules and regulations for carrying out the provisions of section 317.

New disclosure provisions

In order to carry out effectively the recommendation of the Special Subcommittee on Legislative Oversight [1] that announcements should be required to be made under section 317 of the act with respect to payments made to persons other than licensees (such as station employees or persons who are engaged in the preparation of production of programs or program matter), the committee substitute amends title V of the act by adding a new section 508 at the end thereof which is intended to require the disclosure to station licensees of payments made to persons other than such licensees for the broadcasting of any matter by such licensees. A person who violates this proposed section would be subject to criminal penalties.

SECTION 8.—DECEPTIVE CONTESTS

The hearings of the Special Subcommittee on Legislative Oversight with respect to television quiz programs were held on 11 days, October 6–10 and 12 and November 2–6. The subcommittee heard a total of 51 witnesses; network executives, producers, sponsors, advertising agency representatives, quiz show contestants, and the Chairmen of the Federal Communications Commission and the Federal Trade Commission.

The hearings disclosed a complex pattern of calculated deception of the listening and viewing audience. Contests of skill and knowledge whose widespread audience appeal rested on the carefully nurtured

[1] Supra, p. 18.

illusion that they were honestly conducted were revealed as crass frauds.

Sponsors, advertising agency representatives, and network officers conceded that they, too, had been kept in ignorance of the frauds by the independent producers of the shows. In order to obtain interesting and entertaining shows, the producers resorted to tactics ranging from selecting questions from a contestant's known field of knowledge to handing out questions and answers to a contestant in advance of the program.

It became clear that the Communications Act of 1934, in placing responsibility solely on licensees, was inadequate. Since all the popular big-money programs were broadcast via national hookups, the individual licensees had no practical control over the shows or their production. Thus, the law presently places responsibility where it cannot practicably be exercised. The subcommittee recommended as follows: [1]

> 1. It is contrary to the public interest for a radio or television station to be used for broadcasting any program which purports to present a bona fide contest of knowledge or skill if, in fact, such contest or any part thereof is in any way rigged or fixed and if the program is produced or broadcast with intent to deceive viewers or listeners into believing that the contest is bona fide.
>
> It is therefore recommended that the Communications Act of 1934 be amended so as to make it a criminal offense for any person, with intent to deceive viewers or listeners, (1) to broadcast or participate in the broadcasting, or to produce or participate in the production for broadcasting, of any such program, or (2) to conspire with others to do any act so prohibited.

H.R. 11341 contained a provision to carry out this recommendation and section 8 of the committee substitute would prohibit the rigging of purportedly bona fide contests of intellectual knowledge or intellectual skill. This provision would not be applicable to contests or exhibitions involving physical skill, such as wrestling matches.

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[1] Interim report, p. 38.

APPENDIX A

AGENCY COMMENTS WITH RESPECT TO H.R. 1134

Letter from the Department of Justice dated April 15, 1960; letter from the Bureau of the Budget dated April 18, 1960; and letter from the Federal Trade Commission dated April 11, 1960, as set forth below. The Federal Communications Commission did not present written comments on H.R. 11341; its views were presented to the committee in an oral statement by Chairman Ford.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., April 15, 1960.

Hon. OREN HARRIS,
Chairman. Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 11341) to promote the public interest by amending the Communications Act of 1934, to require a public hearing before the original granting of broadcast licenses, to regulate "payoffs" and "swap-offs" between applicants for such licenses, to grant authority to suspend such licenses, to make more effective the requirement regarding announcements as to broadcast matter which is paid for, to prohibit certain deceptive practices in the case of quiz programs, and for other purposes.

Section 309 of the Communications Act of 1934, as amended (47 U.S.C. 309), authorizes the Federal Communications Commission to grant without a hearing an application for a permit or license if it finds that public interest, convenience, and necessity would be served by the granting thereof. Section 1 of the bill would amend section 309 to require the Commission to hold a public hearing in the area involved before granting a broadcast station license, a construction permit, or modification of a license or permit. Section 1 would also amend section 309 so as to prohibit one applicant for a license or permit to pay another applicant to withdraw the latter's application unless approved by the Commission and only if the proposed payment is limited in amount to legitimate and prudent expenditures in prosecuting the application. Section 1 would further amend section 309 by declaring "swap-off" to be contrary to the public interest, convenience, and necessity, the term "swap-offs" meaning any arrangement whereby an applicant for a license or permit, in return for the withdrawal by any other applicant for such license or permit, agrees not to file an application for, or to withdraw as an applicant for, any other license or permit.

Inasmuch as the proposed amendments of section 309 would primarily affect the operations of the Federal Communications Com-

mission, the Department of Justice defers to the views of the Commission concerning their enactment.

Section 312 of the act (47 U.S.C. 312) authorizes the Commission to revoke station licenses on certain specified grounds. Section 2 of the bill would amend section 312 to add as a ground for revocation the violation of certain sections of title 18, United States Code; namely, section 1304 (broadcasting of lottery information), section 1343 (broadcasting of schemes to defraud), and section 1464 (broadcasting of obscene language). Section 2 would also amend the section so as to authorize the Commission to suspend (as an alternative to revocation) a station license for a period of not more than 10 consecutive days for (1) false statements in the application or in any statement of fact required pursuant to section 308, (2) conditions which would warrant the Commission in refusing to grant a license on an original application, (3) failure to operate according to the terms of the license, (4) violation of or failure to observe provisions of the act or rules or regulations authorized by the act, (5) violation of cease and desist orders, and (6) violation of sections 1304, 1343, or 1464 of title 18, United States Code, referred to above.

In his report to the President on "Deceptive Practices in Broadcasting Media" (see H. Rept. 1258, 86th Cong., pp. 61–90), the Attorney General indicated that the revocation of licenses, the only express sanction now authorized under the act, was too drastic and that less severe sanctions should be authorized, including temporary suspension of licenses. The length of time during which suspension should be authorized involves a question concerning which the Department defers to the views of the Federal Communications Commission.

Section 3 of the bill would amend section 317 of the act to require announcement by the person in control of a broadcasting station of any payment made or accepted for any matter broadcast, including the name of the person making such payment, but the person in control of the broadcasting would not be required to make such an announcement if neither he nor any officer or employee of such person had knowledge of such payment or lack of such knowledge was not due to failure to use reasonable diligence. The person who makes the announcement would not be held to have violated the section if the announcement so made is false, provided he establishes that he made the announcement in good faith in reliance upon information furnished by the person making the payment. Violations of the section would presumably be subject to criminal penalties under section 501 of the act.

In his aforementioned report, the Attorney General pointed out that present section 317, coupled with the criminal sanctions of section 501, makes "payola" a criminal offense as to a broadcasting station only, and he recommended the enactment of legislation which would also make "payola" on the part of employees of stations a criminal offense (H. Rept. 1258, p. 90).

While the Department would have no objection to the enactment of legislation similar to the proposed new section 317, we think it might be necessary to define the term "person in control" of broadcasting.

Section 4 of the bill would add a new section 508 to the act which would make it unlawful for any person, with intent to deceive the

listening or viewing public, (1) to supply secret assistance to a participant in a purportedly bona fide contest of knowledge or skill so as to prearrange or predetermine the outcome of the contest, (2) to induce a participant to refrain from using or displaying his knowledge or skill in such a contest, and (3) to produce or participate in a production for broadcasting, to broadcast, or to offer to a licensee for broadcasting any such program with reasonable ground to believe that the acts described above have been done or are going to be done.

The aforementioned report of the Attorney General surveyed the recent disclosures concerning rigged and deceptive television and radio programs, and concluded that by promulgating additional rules and regulations under their affirmative statutory duty to protect the public interest in broadcasting and advertising the Federal Communications Commission and the Federal Trade Commission could take effective action against such practices. In submitting the report the Attorney General stated that "it seems premature to recommend any substantial legislative changes until the agencies and the industry have had an adequate opportunity to show the effectiveness of present and recommended action in dealing with the problems under existing authority" (H. Rept. 1258, p. 63). If the proposed section 508 should be enacted, however, it is recommended that paragraph (4) of subsection (a), relating to conspiracy to violate the section, be deleted, as it is unnecessary in view of section 371 of title 18, United States Code.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LAWRENCE E. WALSH,
Deputy Attorney General.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 18, 1960.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in reply to your letter of March 25, 1960, requesting the views of this office with respect to H.R. 11341, to promote the public interest by amending the Communications Act of 1934, to require a public hearing before the original granting of broadcast licenses, to regulate "payoffs" and "swapoffs" between applicants for such licenses, to grant authority to suspend such licenses, to make more effective the requirement regarding announcements as to broadcast matter which is paid for, to prohibit certain deceptive practices in the case of quiz programs, and for other purposes.

While the Bureau of the Budget is in general agreement with the purposes of the legislation, we recommend against the mandatory hearing requirement in section 1 of the bill for the reasons given by the Federal Communications Commission in its testimony of April 12, 1960, and would also like to call to the committee's attention the numerous technical objections to the bill raised by the Federal Com-

munications Commission, the Department of Justice, and the Federal Trade Commission.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

FEDERAL TRADE COMMISSION,
Washington, April 11, 1960.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of March 25, 1960, for comment upon H.R. 11341, 86th Congress, 2d session, a bill to promote the public interest by amending the Communications Act of 1934, to require a public hearing before the original granting of broadcast licenses, to regulate "payoffs" and "swap-offs" between applicants for such licenses, to grant authority to suspend such licenses, to make more effective the requirement regarding announcements as to broadcast matter which is paid for, to prohibit certain deceptive practices in the case of quiz programs, and for other purposes.

Section 1 of the bill would amend section 309 of the Communications Act of 1934 to modify the procedural steps to be taken by the Federal Communications Commission on applications for construction permits. station licenses, and modifications and renewals of licenses. It would also establish conditions under which one competing applicant for a license or permit may pay compensation to another for withdrawal of the other as an applicant, subject to regulations of the Federal Communications Commission, and would prohibit "swap-offs," i.e., arrangements whereby an applicant for a license or construction permit withdraws his application in return for the withdrawal of another applicant for some other license or permit.

As the proposed amendment of section 309 of the Federal Communications Commission Act pertains to matters within the jurisdictional and administrative authority of the Federal Communications Commission and would have no effect upon the duties or functions of the Federal Trade Commission, we have no comment to offer upon this section of the bill.

Section 2 of the bill would amend section 312 of the Communications Act of 1934 by adding instances of violation of sections 1304, 1343, and 1464 of title 18 of the United States Code to the grounds for which the Federal Communications Commission may revoke a station license or construction permit. In addition, it would authorize the Federal Communications Commission to suspend a station license for a period of not more than 10 consecutive days for any of the various reasons which may be considered under that agency's authority to revoke a station license or construction permit. Corresponding amendments also would be made to the section of law pertaining to Federal Communications Commission procedure to cover actions taken for suspension as well as actions for revocation.

Again, this proposed amendment deals with matters primarily within the jurisdictional and administrative authority of the Federal Communications Commission. The Federal Trade Commission,

therefore, offers no comment other than to note that, to the extent that grounds for revocation or suspension of licenses would include a violation of title 18, United States Code, section 1304 (criminal statute prohibiting the broadcasting of lottery information) and title 18, United States Code, section 1343 (criminal statute prohibiting the use of broadcasting in furtherance of schemes to obtain money or property by means of false or fraudulent pretense), this additional authority would be consistent with, and in aid of, the Federal Trade Commission's efforts against the dissemination of lottery schemes in interstate commerce and false and deceptive advertising and representations when the latter reach the proportion of being fraudulent.

Section 3 of the bill would amend section 317 of the Communications Act of 1934 to require the "person in control" of the broadcasting of any matter, for which payment is made, promised, charged, or accepted by any person, to announce that the matter in question was paid for and disclose the name of the person who has made, promised, or furnished payment. The section would except situations where neither the "person in control" nor any officer or employee of such person had requisite knowledge, if such lack of knowledge was not due to a failure to exercise reasonable diligence. Also excepted would be instances where the "person in control" made an announcement in purported compliance with the law in good faith reliance upon information furnished by the person making or promising the payment, provided the "person in control" had secured a requisite guaranty from the one making payment relating to the payment in question.

Correspondingly, the amendment would require the person making or promising to make the payment for the broadcasting of any matter to inform the "person in control" as to the name and address of the person making or promising payment, the identification of the person to whom payment is made or is to be made, and the nature and amount of value of payment. The person making payment must, upon request of the "person in control," submit a guarantee that all the information given is full and accurate.

The primary effect of this amendment would be to expand the present section 317 coverage of licensees who fail to announce that the broadcasting of matter is paid for to include and place responsibilities upon those who make payment for the broadcasting of such matter. As testified to before the Subcommittee on Legislative Oversight on March 4, 1960, the Federal Trade Commission has been most active in taking steps against those making payments in instances of "payola" or "plugola." As it was then explained, the Commission feels that, within the limits of its appropriations, action against those making such payments, rather than against the numerous recipients of the payments, would be more effective in attacking the practice. The Commission's statement concluded as follows:

"It is apparent that this Commission could spend a substantial portion of its appropriation to clean up, in its entirety, the 'payola' and 'plugola' practices which have come to its attention since your November hearings. For this reason, we subscribe to the recommendation set forth in the subcommittee's interim report, and we favor the enactment of legislation which would provide criminal penalties for practices generally described in this report as 'payola' or 'plugola.'"

Therefore, keeping in mind that the criminal provision of section 501 of the Communications Act would apply in the event of a violation of section 317 of that act, the Commission favors the purposes of the proposed amendment.

While section 317, as proposed to be amended, would apply to those who make payments and persons in control of broadcasting, the amendment does not go so far as to include disk jockeys, announcers, and others who may actually receive the undercover payments. In order to afford a more complete and effective stoppage of the practices in question, the Commission recommends that consideration be given to including the activities of such additional classes of persons in the proposed legislation.

Section 317 would be written in terms of notification to, and the responsibilities of, "the person in control of such [the] broadcasting." This phrase is not defined in the bill and is susceptible of varying constructions. Its use also would require adjudication as to who is "the person in control" of any broadcast which may be involved.

The two enumerated exceptions to subsection (b) of section 317 are stated in the conjunctive. It appears that these two exceptions are intended as alternatives and that the word "or," rather than the word "and," should be used at line 6 of page 11 of the bill.

Section 4 of the bill would add a new section 508 to the Communications Act of 1934, providing criminal penalties for various acts taken to assist in the effectuation of broadcasting or telecasting rigged quiz shows.

In light of the prevalence of such acts and practices, as disclosed during the recent hearings before the Subcommittee on Legislative Oversight, the Commission favors the enactment of specific criminal legislation, in the nature of that proposed. Inasmuch as this is a proposed criminal section to be added to the Communications Act of 1934, the Commission defers comment as to the particular provisions of the section to the Federal Communications Commission and the Department of Justice.

By direction of the Commission:

EARL W. KINTNER, *Chairman.*

N.B.—In view of the hearings scheduled to begin April 12, 1960, this report has not been cleared with the Bureau of the Budget.

APPENDIX B

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., May 20, 1960.

Hon. OREN HARRIS,
Committee on Interstate and Foreign Commerce,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN HARRIS: In your letter of May 18, 1960, you requested that the Commission review a proposal to amend section 317 and a disclosure statute which was drafted by attorneys for the networks and the National Association of Broadcasters. With reference to the proposed amendment to section 317, it appears that the proposed section 317(a)(1) down to the proviso is substantially the same as the present 317. The proviso reads: "*Provided,* That

'service or other valuable consideration' shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast."

The words "beyond an identification which is reasonably related to the use of such service or property on the broadcast" raise the problem as to the permissible degree of identification without the necessity of an announcement. The commentary which was enclosed with the proposed statute is of considerable assistance in determining the meaning of this language. We recognize that the matters the proviso intends to reach must necessarily contain broad language. It would appear that, if the committee report were to incorporate these pertinent portions of the commentary or provide similar and perhaps more specific guidelines, the Commission would be in a position to place a reasonable interpretation upon this general language.

Subsection 2 of the proposed section 317(a) would permit the Commission to continue in existence its rule regarding political programs or controversial issues.

Subsection (b) of the proposed section 317 relates over to the companion disclosure statute and would require an announcement of sponsorship where there had been obtained a consideration within the disclosure statute.

Subsection (c) of the proposed section 317 would require station licensees to exercise reasonable diligence to obtain from its employees and others information to enable the licensee to make appropriate announcement of sponsorship. The term "reasonable diligence" is appropriate in the circumstances, since it would require the licensee to take appropriate steps to secure such information, but it would not place a licensee in the position of being an insurer, nor does this condition permit a licensee to escape responsibility for sponsorship announcements by inactivity on his part. We believe that the term "reasonable diligence" has a sufficiently accepted legal meaning so as to permit the Commission to apply this standard in given factual situations.

Subsection (d) of the proposed section 317 provides the Commission shall waive the requirements of an announcement where the public interest, convenience, or necessity does not require an announcement. The Commission suggests that this language be altered by the deletion of "shall" and the substitution of "may". We would prefer to have the discretionary power implicit in the word "may" rather than the mandatory "shall" which may be construed as an affirmative duty to make a waiver.

Section (e) of the proposed 317 grants the Commission power to prescribe appropriate rules and regulations with reference to this section. The Commission is in accord with this portion of the bill.

Attached as page 3 to the proposed amendment of section 317 is an undesignated section which provides that subsection (b) of the proposed section 317 "shall not apply with respect to any money, service, or other valuable consideration, directly or indirectly paid, or promised, or charged, or accepted before the effective date of this Act." The proposed subsection (b), of course, deals with the companion dis-

closure statute. The Commission questions the value of this particular section since subsection (b) of section 317 is of no effect until actually enacted into law and it would seem that any activity forbidden by the disclosure statute or subsection (b) that continued after the enactment of this law as a result of an agreement entered into prior to the effective date of the statute should also come within the terms of the statute. Additionally, the argument might be made that this statute would have a retroactive effect and would discharge any responsibility for a violation of the present section 317 as it now stands. Accordingly, the Commission believes this portion of the statute should be deleted.

With reference to the disclosure statute, the Commission is in general agreement with the proposal, but we do wish to point out certain problems that may arise. For instance, with reference to section (b) the last three lines read:

"This subsection shall not apply to transactions between the payee and his employer, or between the payee and the person for whom such program is being produced."

Turning first to the phrase "between the payee and his employer" it is apparent that the object sought here is that the licensee would be free to discharge his responsibility and control the relationship between his station operations and his employees. However, there exists the possibility of dual employment. Consider, for example, the possibility of a station licensee employing a diskjockey who in turn is employed by a record manufacturer as a consultant. It would appear that this phrase may be broad enough to permit the diskjockey to escape the responsibility for reporting to the licensee if he were paid by the record manufacturer to give a record or records an inordinate amount of exposure. It would appear that the statutory language should be changed or, in the event that this is impracticable, the legislative history make clear the meaning of the phrase "between the payee and his employer". In the same sentence of subsection (b) the phrase appears "between the payee and the person for whom such program is being produced." This latter phrase is also of concern to the Commission because of situations which might arise. For example, assuming that an independent producer is producing a program for a network, it is clear that as between the producer and the network the subsection has a proper application in that the network will have the right to determine the material contained in program and would have full knowledge of any material which it might include in the program which would require an announcement. However, further assuming that an employee of the independent producer had some collateral interest in an unrelated business activity which he was able to give broadcast exposure as a result of his employment which was not readily ascertainable either by the independent producer or the network, it does not appear that such a situation is covered and that this type of transaction does not fall within any of the terms of the disclosure statute.

With reference to the final sentence of section (d) of the disclosure statute providing that an appropriate announcement shall constitute the disclosure required, the Commission believes that for the sake of clarity this sentence should appear as a separate subsection of the proposed statute.

Page 4 of the disclosure statute is an unidentified section, providing that section ____ "shall not apply with respect to any money, service, or other valuable consideration, paid or accepted before the effective date of this Act or, to any agreement to pay or accept money, service, or other valuable consideration which was made before the effective date of this Act." The Commission expresses the same concern with reference to this section as it did with reference to a previous section relating to a proposed section 317.

By direction of the Commission:

FREDERICK W. FORD, *Chairman.*

APPENDIX C

[FCC 60-239 Public Notice 85460]

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 16, 1960.

SPONSORSHIP IDENTIFICATION OF BROADCAST MATERIAL

Information supplied by broadcast licensees in answer to the Commission's recent inquiry concerning unannounced sponsorship of broadcast material, and other information before the Commission concerning such practices indicates that many station licensees have failed to comply with the requirements of section 317 of the Communications Act and with the Commission's rules promulgated thereunder. In many instances, such broadcasts resulted from practices of station employees and independent contractors, acting in their individual capacities. In these situations, questions are raised as to whether the licensee took reasonable steps to inform itself as to the type and nature of the material being broadcast by its station, and to assure itself that its operation met the sponsorship identification mandate of the act and the rules.

It is apparent that consideration has been provided in exchange for the broadcasting of various types of material without an accompanying announcement indicating that consideration was provided, and by whom, in exchange for or as an inducement for the particular broadcast. The information before the Commission indicates that, in general, such consideration was usually in one of the following forms: (1) recorded material provided to licensees and/or their employees and independent contractors for actual air use or for some other use by these groups (prizes to listeners, door prizes at "record hops" etc.); (2) promotion of outside activities in which a licensee, employee, or independent contractor participated and from which he received financial or other benefits; (3) acceptance of travel expenses, accommodations and other valuable consideration by a licensee or its employees or independent contractors in exchange for "plugging" a place, product, service, or event; and (4) payments for "plugs", expressed or implied, without accompanying revelation that the particular broadcast material was, in fact, sponsored.

Section 317 of the Communications Act reads as follows:

"All matter broadcast by any radio station for which service money, or any other valuable consideration is directly or indirectly paid, or

promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person."

Commission regulations promulgated thereunder are contained in sections 3.119, 3.289, 3.654 and 3.789 of the Commission's rules. The congressional intent in enacting section 317 of the Communications Act and similar antecedent legislation was clearly to prevent deception on the part of the public growing out of concealment of the fact that the broadcast of particular program material was induced by consideration received by the licensee. During the past 2 years, the Commission has had many occasions to consider the applicability of the above statute and rules, and has made its interpretations public. Consistently, these interpretations have contained the statement: "The Commission, of course, expects that in connection with all of the material presented over his station, the licensee will use reasonable diligence to ascertain the true sponsor and source of the material broadcast, and will disclose the same to the station's audience as required by the rules."

We call the attention of all licensees to the current notice of proposed rule making in the matter of amendment of sections 3.119, 3.289, 3.654 and 3.789 of the Commission's rules, released on February 8, 1960 (docket No. 13389), and the views expressed in the Commission's public notice of October 10, 1950, entitled "Sponsor Identification on Broadcast Stations" (6 Pike & Fischer RR 835).

With respect to the many prevalent practices revealed in licensee responses to the Commission's inquiry of December 2, 1959, and in other information before the Commission, it is evident that compliance with the act and the rules has not been attained. Accordingly, a discussion of these practices appears pertinent at this time.

FREE RECORDS

Information before the Commission indicates that virtually all broadcast stations receive some free musical recordings from manufacturers, distributors or other parties interested in promoting the recording itself or the performer or musical selection displayed thereon. The number of such recordings received, the charges to the station (if any), the number of copies of an *individual recording* received, the manner and degree of solicitation (if any) on the part of the station and other similar factors vary from station to station. The Commission's information indicates that, generally, stations in major metropolitan areas receive essentially all recordings free of charge; stations in smaller cities receive records at substantially reduced prices from manufacturers or distributors via "subscription services"; and the remainder of the stations secure few free records or subscription service records.

The Commission is of the view that the receipt of *any* records by a station which are intended by the supplier to be, or have the practical effect of being an inducement to play those particular records or any other records on the air, and the broadcast of such records, requires an appropriate announcement pursuant to section 317. This includes, but is not limited to, those situations in which a manufacturer, distributor or other person donates recordings (whether or not copies of the selections being played on the air) to the station as an inducement

for exposure on the air of recordings handled by the same manufacturer or distributor. The Commission is of the view that, as a practical matter, quantities of records are given to broadcast stations for no other purpose than as an inducement to obtain preferential air exposure for certain recordings in which the donor has a financial interest—especially in those situations where a relatively large number of recordings are "donated" to a station for distribution to listeners as prizes, or to be given away at "record hops", etc.

The Commission is further of the view that an announcement must accompany the playing of any recording received under terms such as those outlined above, indicating that the station has received consideration and from whom for playing the particular recording and/or that the recording was furnished to the station, and by whom, as appropriate. An announcement merely stating the trade name on the record label, for example, without the added indication that consideration (in the form of the recording itself or otherwise) was supplied or furnished is insufficient. Only an announcement containing both of these elements, where applicable, provides the degree of information to the listening public contemplated by the Congress in enacting section 317. It follows then that compliance with said statute requires that an appropriate announcement accompany the playing of all recordings received free or at a nominal charge, and that a similar announcement be made when the station broadcasts recordings of a particular manufacturer, distributor, etc., who has provided other free records which the station utilizes in any nonbroadcast manner.

PROMOTION OF OUTSIDE ACTIVITIES

The most frequent activity falling into this category is the promotion of "record hops." These enterprises may be owned by the station licensee, by its employees, by outside parties, or by some combination thereof. If the station or its employees do not have the beneficial interest in the enterprise, the station personality acting as "record hop" master of ceremonies may receive a salary or portion of the profits. In some instances, the "record hop" may be a fundraising activity of a charitable, civic, educational, or religious organization. Information before the Commission indicates that such "record hops" frequently feature the distribution of records (obtained free or at a substantial reduction in price by the station or its employees) as door prizes, and also that such presentations often utilize recording "talent" on a "live" basis, with the performer's fee paid by the station, its employee, or a record distributor. It is also noted that on many occasions the "talent" appears for a fee substantially less than the prevailing or union pay scale; or as a variation thereon, the operator of the "record hop" is partially or fully reimbursed by a record distributor or manufacturer for the fees paid to performers.

Obviously, where a disc jockey or station licensee anticipates a financial benefit to be derived from participation in a "record hop" enterprise, advance on-the-air promotion of the "hop" will stimulate larger attendance than could otherwise be expected. Past practices reveal widespread "record hop" plugging on stations where the station itself or its employees had some financial interest in these enterprises. Such announcements have usually been labeled "promotional" noncommercial spot announcements by the stations broadcasting them,

or, in the extreme cases, no cognizance whatever has been given to these announcements, and they have not been entered on the station's logs on the theory that they were a part of the disc jockey's ad-lib "patter." It also appears that recordings by performers appearing at the "hop," or recordings distributed by the donor of free records to be given away at the "hop" may have been played at frequent intervals preceding the "hop" as a means of engendering in the listener a desire to purchase an admission ticket to the "hop" or in exchange for the cooperation of performers or donors of records. The probability of increased financial benefits accruing to the beneficial owners of and paid participants in these "record hops" as a result of broadcast promotion is readily apparent. Less direct, but just as financially advantageous are the benefits to performers, distributors and record manufacturers from air exposure in return for their contributions to the "record hop."

In light of the above, the Commission is of the view that appropriate announcements must accompany *all* broadcast material (announcements, playing of records, etc.) where a *profit* is to be derived from these "record hops," or where recorded or other broadcast exposure is being provided (whether based upon an express or implied agreement) in exchange for all or a part of a performer's fee or in exchange for the donation of records, prizes, hall rental, etc. Such announcements must identify the parties deriving financial benefit from the "record hop" as well as any other parties providing consideration in any form whatsoever in exchange for any of the above types of broadcast exposure. Although ostensibly it may appear that money, services or other valuable consideration is being provided gratuitously for use in some aspect of the presentation of the "record hop" itself, where such consideration is, in fact, provided for the purpose of or has the effect of inducing on-the-air "mentions" or "record spins," the accompanying announcement shall clearly state that such consideration is being provided, and by whom, in exchange for the broadcast presentation of one or more of these various types of program matter.

These sponsorship identification announcement requirements apply in connection with all "record hop" enterprises where any or all of the above commercial practices are involved, irrespective of the identity of the persons or nature of the organizations receiving the net proceeds of such "record hops."

TRANSPORTATION, ACCOMMODATIONS, "REMOTE" EXPENSES

The Commission's attention has been directed to the fact that transportation and accommodation expenses, and equipment operation and origination expenses incurred in "remote" pickups have been paid in part or in full by persons or organizations as an inducement to the broadcast of program material containing, for example, pictures or descriptions (which may or may not be accompanied by editorial comment or endorsement) of a place, product, service or event. Such payments may have either been made with the understanding that the product, event, etc., would be given broadcast exposure, or made in the hope that the person receiving the benefit would consider the matter of general interest or "newsworthy" and decide to provide broadcast coverage.

When inducements of the type set forth above result in the broadcast of any type of program material, it is especially important that an appropriate announcement be made. In such instances, the public may reasonably believe that the licensee considered the place, event, etc., to be of sufficient news or entertainment value so as to justify extraordinary expenditures in order to provide broadcast coverage when, in fact, consideration offered by a party or parties other than the licensee or commercial sponsor of the program was responsible, to a degree, for the decision to broadcast the particular program material.

The announcement contemplated in these situations should fairly disclose the fact that consideration was provided, and by whom, as an inducement for the broadcast presentation. This type of announcement is anticipated in those instances where the consideration is given with the understanding that certain broadcast coverage would be provided, and also where consideration has been given with the hope that broadcast exposure would result when, in fact, such exposure does occur.

The Commission wishes to distinguish between situations where the program material alone (for example, a "travel" film produced by a chamber of commerce) is provided to a licensee for air use, and situations where consideration other than or in addition to the program material itself (for example, a trip to a resort) is provided as an inducement to the licensee or its employees or independent contractors to broadcast certain matter. The former requires an announcement that the program or film was furnished to the licensee for broadcast use; the latter necessitates the additional revelation that consideration was provided in return for or as an inducement to the broadcast of the particular program material.

The Commission is compelled to reject the contention advanced by some licensees that in the above situations no announcement is required because such "favors" are "normal business practices" and because no more benefits are derived by broadcast personnel than accrue to members of the press, etc., who regularly are given this type of "junket." These arguments are wholly without merit by reason of the fact that certain requirements not applicable to other forms of communication have been imposed by the Congress on broadcast stations. The acceptance of such gratuities is in no way proscribed so long as the announcement required by the statute is properly made.

"PLUGS" AND "SNEAKY COMMERCIALS"

Instances have come to the Commission's attention in which "trade out" announcements—announcements in exchange for which the station receives services or products—have failed to disclose the fact that the particular matter broadcast is commercial and is supported by some form of consideration. For example, the Commission considers such statements as, "Travel arrangements made through Trans-State Airways" to be the substance of the "plugs" themselves. Such announcements do not indicate that consideration (free transportation) was provided in exchange for the particular broadcast exposure or "plug."

Similarly, absent an appropriate announcement, compliance with section 317 is lacking in arrangements for the barter of air time involv-

ing the exchange of cash, products or services for broadcast exposure of certain products or services (e.g., closeups of certain brands of typewriters on TV newscasts in exchange for the loan, free of charge, of typewriters for use in the station's offices) in which the commercial aspect of the presentation is not apparent. Additionally, such exposure may imply an endorsement of the particular product by the broadcast licensee. When, in fact, such objects are shown because of some financial benefit accruing thereby to the licensee, its employees or independent contractors, the listening and viewing public is entitled to the knowledge that such is the case, in order that it may view such a commercial presentation in its true context.

It has come to the Commission's attention that intentional, indirect references have been made to certain products in syndicated "interview" and other types of programs. For securing the broadcast of such "plugs," the producer, program packager, or "public relations" organization receives a fee from the particular sponsor involved. In some instances, it appears that the licensee broadcasting the program not only failed to receive revenue for this commercial use of its facilities, but in addition neither the licensee nor its audience may have been aware that the matter broadcast was deliberate commercial advertising. In this connection, the Commission has also been advised that networks and other producers and suppliers of program material have made surcharges (in the form of products and "promotional fees") for the publicity value to a manufacturer resulting from a showing and description of his product on television programs. For example, the manufacturer of a refrigerator to be awarded as a prize on a giveaway program may be required to provide a number of *extra* refrigerators and may be charged a "promotional fee" for the broadcast exposure of his product. The Commission wishes to indicate to producers or suppliers of such programs that it considers this matter a serious one inasmuch as such practices, engaged in without the knowledge of the stations broadcasting such programs, have the effect of preventing individual licensees from complying with the Commission's sponsorship identification and logging requirements.

On September 9, 1959, the Commission released a memorandum opinion and order denying a petition for rulemaking permitting the utilization of "teaser" announcements without sponsor identification of each such announcement. However, it has come to the attention of the Commission that practices similar to the broadcasting of "teaser" announcements have been utilized subsequent to the date of this order. We wish to emphasize that, in addition to "teaser" announcements, the broadcast of any similar commercial matter, such as that in the form of the playing of an instrumental version of a commercial jingle—associated exclusively with the sponsor holding the copyright to the musical jingle—without explicit identification of the sponsor, is likewise proscribed.

We also believe that, in light of the above discussion, it should be obvious that such practices as periodically playing a song from a current motion picture, when such is inspired by an express or implied agreement with a local theater or distributor to do so (or as a "bonus" for purchasing a number of spot announcements advertising the movie) and is not accompanied by an appropriate sponsorship announcement, violate section 317 of the act.

Responses to the Commission's inquiry of December 2, 1959, indicate that questions exist concerning compliance with section 317, compliance with the Commission's station log requirements, and possible abdication of licensee responsibility in the selection of program material, as well as character qualifications of licensees. The Commission recognizes that in some instances, noncompliance with the provisions of section 317 may have resulted from a misinterpretation of that section and in other instances negligence on the part of the licensee in carrying out his responsibilities or a failure to maintain adequate supervision on the part of management, or reliance on what has been termed "accepted industry practices." While the Commission is not delineating precise situations or circumstances which will warrant the imposition of sanctions for past violations of section 317 of the act, the Commission will not consider the reasons illustrated above as a sufficient excuse for noncompliance occurring in the future. Cases now before the Commission involving willfulness, misrepresentation, or serious neglect on the part of the licensee or other circumstance indicating a failure to exercise the proper degree of licensee responsibility will be considered by the Commission on a case-to-case basis and appropriate action will be taken in each case. However, pending final action on the proposal advanced in Docket 13389, the Commission expects its broadcast licensees to use the utmost diligence to apprise themselves of situations in which their employees or independent contractors have outside financial interests which are being promoted on the air and to act accordingly to require that appropriate announcements be made wherever section 317 is involved.

APPENDIX D

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as passed by the Senate, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTIONS 309, 319(c), AND 405 OF THE COMMUNICATIONS ACT OF 1934 (47 U.S.C. 309, 319(c), AND 405)

ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES

[SEC. 309. (a) If upon examination of any application provided for in section 308 the Commission shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

[(b) If upon examination of any such application the Commission is unable to make the finding specified in subsection (a), it shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such finding. Such notice, which shall precede formal designation for a hearing, shall advise the applicant and all other known parties in interest of all ob-

jections made to the application as well as the source and nature of such objections. Following such notice, the applicant shall be given an opportunity to reply. If the Commission, after considering such reply, shall be unable to make the finding specified in subsection (a), it shall formally designate the application for hearing on the grounds or reasons then obtaining and shall notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. The parties in interest, if any, who are not notified by the Commission of its action with respect to a particular application may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such applicat on shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant.

[(c) When any instrument of authorization is granted by the Commission without a hearing as provided in subsection (a) hereof, such grant shall remain subject to protest as hereinafter provided for a period of thirty days. During such thirty-day period any party in interest may file a protest under oath directed to such grant and request a hearing on said application so granted. Any protest so filed shall be served on the grantee, shall contain such allegations of fact as will show the protestant to be a party in interest, and shall specify with particularity the facts relied upon by the protestant as showing that the grant was improperly made or would otherwise not be in the public interest. The Commission shall, within thirty days of the filing of the protest, render a decision making findings as to the sufficiency of the protest in meeting the above requirements; and, where it so finds, shall designate the application for hearing upon issues relating to all matters specified in the protest as grounds for setting aside the grant, except with respect to such matters as to which the Commission, after affording protestant an opportunity for oral argument, finds, for reasons set forth in the decision, that, even if the facts alleged were to be proven, no grounds for setting aside the grant are presented. The Commission may in such decision redraft the issues urged by the protestant in accordance with the facts or substantive matters alleged in the protest, and may also specify in such decision that the application be set for hearing upon such further issues as it may prescribe, as well as whether it is adopting as its own any of the issues resulting from the matters specified in the protest. In any hearing subsequently held upon such application issues specified by the Commission upon its own initiative or adopted by it shall be tried in the same manner provided in subsection (b) hereof, but with respect to issues resulting from facts set forth in the protest and not adopted or specified by the Commission, on its own motion, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the protestant. The hearing and determination of cases arising under this subsection shall be expedited by the Commission and pending hearing and decision the effective date of the Commission's action to which protest is made shall be postponed to the effective date of the

Commission's decision after hearing, unless the authorization involved is necessary to the maintenance or conduct of an existing service, or unless the Commission affirmatively finds for reasons set forth in the decision that the public interest requires that the grant remain in effect, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing.]

Sec. 309. (a)(1) No application provided for in sections 308, 310(b), and 325(b) for an instrument of authorization or any station in the broadcasting or common carrier services or for any station within the scope of subsection (e) shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof: Provided, That this requirement shall not apply to any minor amendment of any such application or to any application for (A) minor change in the facilities of an authorized station, (B) consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control, (C) license under section 319(c) or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license, (D) extension of time to complete construction of authorized facilities, (E) authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station, or (F) authorizations pursuant to section 325(b) where the programs to be transmitted are special events not of a continuing nature, or (G) special temporary authorization for nonbroadcast operation not to exceed thirty days where no application for regular operation is contemplated to be filed or pending the filing of an application for such regular operation or (H) authorization under any of the proviso clauses of section 308(a).

(2) Any party in interest may file a petition to deny any application or amendment thereof to which the requirement of paragraph (1) of this subsection applies at any time prior to the day of Commission grant thereof without hearing or formal designation thereof for hearing: Provided, That, with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. Such petition shall be served on the applicant and shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant thereof would be prima facie inconsistent with subsection (b). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit. If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (b), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition which shall dispose of each substantial question presented thereby. If a substantial

and material question of fact is presented or if the Commission for any other reason is unable to find that grant of the application would be consistent with subsection (b), it shall proceed as provided in subsection (c).

(b) Whether or not a petition to deny is filed under subsection (a), the Commission shall examine each application provided for in section 308. If upon examination of any such application provided for in section 308 and upon consideration of any such petition and any reply thereto or such other matters as the Commission may officially notice the Commission shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

(c) If upon examination of any such application, petition to deny or reply thereto or such other matters as the Commission may officially notice the Commission is unable to make the finding specified in subsection (b), it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally: Provided, That, if the Commission finds that by first giving the applicant and other known parties in interest notice of all objections to such application and an opportunity to reply thereto a determination of the application may be expedited, it shall forthwith give such notice and opportunity for reply before formally designating the application for hearing. The parties in interest, if any, who are not notified by the Commission of its action with respect to a particular application, may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

(d) When an application subject to subsection (a) has been filed, the Commission, notwithstanding the requirements thereof, may, if otherwise authorized by law and if it finds that there are extraordinary circumstances requiring emergency operations in the public interest and that delay in the institution of such emergency operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such emergency operations for a period not exceeding ninety days, and upon making like findings may extend such temporary authorization for one additional period not to exceed ninety days. When any such grant is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405.

(e) The stations other than in the broadcasting or common carrier service referred to in subsection (a) are (1) fixed point-to-point microwave stations, but not including control and relay stations used as integral parts of mobile radio systems, (2) industrial radio positioning stations for which frequencies are assigned on an exclusive basis, (3) aeronautical en route stations, (4) aeronautical advisory stations, (5) airdrome control

stations, (6) aeronautical fixed stations, and (7) such other stations or classes of stations as the Commission by rule provides.

(f) The Commission is authorized to adopt by rule reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

[(d)] *(g)* Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

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CONSTRUCTION PERMITS

SEC. 319. (a) * * *

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(c) Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit. The provisions of section 309 (a), (b), [and (c)] *(c), (d), and (e)* shall not apply with respect to any station license the issuance of which is provided for and governed by the provisions of this subsection.

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REHEARINGS BEFORE COMMISSION

SEC. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, [and] *any* party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing; and it shall be lawful for the Commission, in its discretion, to grant such a rehearing if sufficient reason therefor be made to appear. Petitions for rehearing must be filed within thirty days from the date upon which public notice is given of any decision, order, or requirement complained of. No such application shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such decision, order, or requirement, except where the party seeking such review (1) was not a party to the proceedings resulting in such

decision, order, or requirement, or (2) relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. *The Commission shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: Provided, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission shall take such action within ninety days of the filing of such petition.* Rehearings shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission believes should have been taken in the original proceeding shall be taken on any rehearing. The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b), shall be computed from the date upon which public notice is given of orders disposing of all petitions for rehearing filed in any case, but any decision, order, or requirement made after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order.

SEPARATE VIEWS OF HON. JOHN B. BENNETT, HON. STEVEN B. DEROUNIAN, AND HON. ANCHER NELSEN

Generally speaking, we are in favor of the amendments which have been made to S. 1898 by the committee. However, we reserve the right to offer such improving amendments on the floor as we may deem appropriate.

At this point we must note that, in our opinion, the bill is woefully deficient because of its failure to require the radio and television networks to exercise the same high responsibility and diligence in the public interest which is required of individual station licensees. The great bulk of program material brought into the American home today by radio and television originates with the networks. The individual station licensee, as a practical matter, has little or no control over the content of the programs fed to him by a network, in many cases several thousand miles away. Nevertheless, under existing law, the individual licensee is solely responsible for what goes out over his station facilities. The committee's bill will impose an even stricter accountability upon the individual broadcaster.

The hearings held during the past 3 years by the Legislative Oversight Subcommittee, clearly demonstrate how, through negligence and indifference, the networks have abused their exempt status under the law. For example, it is clear from the record that due diligence and an awareness of their responsibility to the public on the part of the networks, would have severely localized, if it had not prevented, the quiz and payola scandals. Recognizing this, the subcommittee took specific note of this regulatory gap. It unanimously declared that—

> A new section should be added to the [Federal Communications] act requiring that radio and television networks be licensed by and be subject to the regulations of the Federal Communications Commission.

We are firmly convinced that effective administration of the act is impossible until the networks are required to operate in the public interest on the same general basis as individual broadcasters. The continued exemption of the networks from any supervision at a time when increased regulation is being imposed upon individual station licensees is, to us, an anomoly.

JOHN B. BENNETT.
STEVEN B. DEROUNIAN.
ANCHER NELSEN.

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